



**Koskei alias Ashara v Republic (Criminal Appeal (Application)
E013 of 2024) [2024] KECA 780 (KLR) (4 July 2024) (Ruling)**

Neutral citation: [2024] KECA 780 (KLR)

**REPUBLIC OF KENYA
IN THE COURT OF APPEAL AT NAKURU
CRIMINAL APPEAL (APPLICATION) E013 OF 2024**

JM MATIVO, JA

JULY 4, 2024

BETWEEN

JACKSON CHERUIYOT KOSKEI ALIAS ASHARA APPLICANT

AND

REPUBLIC RESPONDENT

(Being an application for leave to file an appeal out of time from the Judgment of the High Court of Kenya at Kericho (Sergon & Omondi, JJ.) dated 31st July 2014 in HCCRA No. 40 of 2011)

RULING

1. The application before me is dated 28th September 2023. The applicant prays for leave to appeal out of time against the judgment issued in HCCRA No. 40 of 2011 on July 31, 2014
2. The applicant, Jackson Cheruiyot Koskei, was charged, tried and convicted of the offence of robbery with violence by the Chief Magistrate's Court, Kericho in Criminal Case No. 411 of 2011 and sentence to death.
3. His appeal against conviction and sentence was dismissed. He did not lodge his notice of appeal within the statutory-stipulated time of 14 days. He now seeks extension of time to appeal under rule 4 of the Court of Appeal Rules, 2022. He attributes the delay to his financial constraints and inability to hire an advocate. The respondent filed submissions dated 3rd July 2024 supporting the application.
4. I have considered the application and the supporting affidavit. It is evident that there has been a 9 years and 2 months delay in filing the appeal. The applicant's position is that the delay was occasioned by his relatives' financial constraints.
5. The Supreme Court of Kenya pronounced itself in the question of extension of time in the case of [Andrew Kiplagat Chemaringo v](#)



Paul Kipkorir Kibet [2018] eKLR, and stated as follows:

“the law does not set out any minimum or maximum period of delay. All it states is that any delay should be satisfactorily explained. A plausible and satisfactory explanation for delay is the key that unlocks the court’s flow of discretionary favour. There has to be valid and clear reasons, upon which discretion can be favourably exercisable.”

6. I have considered that the applicant is on death row. The reason in support of the application is plausible. I am inclined to exercise my discretion in his favour. I direct the applicant to file his notice of appeal within the next 14 days and the memorandum of appeal within 30 days thereafter. The Record of Appeal shall be filed within 45 days from today.

DATED AND DELIVERED AT NAKURU THIS 4TH OF JULY, 2024.

J. MATIVO

..... **JUDGE OF APPEAL**

I certify that this is a true copy of the original.

Signed DEPUTY REGISTRAR

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